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STOP!

Do not take any further action until you have consulted with law enforcement officials.



LEARNING MODULE D

How to Conduct a “Reasonable” Search of a Cell Phone

Depending on the laws in your state, you likely have limits on when and why you can look into a student’s cell phone. Your school or district/regional Responsible Use Policy (RUP/AUP) will also affect how much authority you have to confiscate a phone if it causes a disruption in class, is used for cheating, or if you reasonably suspect the phone contains harmful or illegal materials.

In order to look into a student’s cell phone, you must have a “reasonable” suspicion that the phone contains evidence of an illegal, unlawful, or harmful activity, or evidence that a school policy has been violated. For example, situations that might require a search include:

- Reasonable suspicion of cheating, such as text messages containing answers to test questions or a picture of an exam.
- Reasonable suspicion that someone on or off campus is in danger of serious harm (e.g., plans for a gang fight, plans to hurt someone)
- Reasonable suspicion of intent to commit suicide or other self harm
- Reasonable suspicion of sexually explicit photos of a minor (e.g. sexting pictures from another student)
- Inappropriate contact between a student and faculty or staff member
- Other situations that are not illegal but still violate the Responsible Use Policy.

A report of a specific problem by a reliable staff member who is confident that he/she saw the content in question would constitute a “reasonable suspicion.” A reliable student or group of students reporting specific detail of a problem is a reasonable suspicion. A phone call from a parent with specific detail, for example, during a routine search of her own child’s phone, a parent discovers information sent from another student.

In these cases, the principal is allowed to conduct a “limited search” of the device in question. A limited search means the principal does not search the phone indiscriminately. The principal is allowed to look only for the specific item reported. If a photo is reported, the principal should not search through the student’s email or text messages, unless it is suspected that the photo was sent by email or text. If a text is reported, the principal should not search through the photos.

If you are not sure you have a “reasonable suspicion,” consider gaining consent from the student before initiating the search. If the student grants permission, the search is then allowable even if someone later questions the nature of your information. If the student refuses to give consent, you may still search the phone if you have a reasonable suspicion. Consider asking the person who reported the problem if they know someone who can corroborate their story or if they have any other relevant information that might help you make your search more specific.

NOTE: WHEN CONDUCTING A SEARCH FOR EVIDENCE OF POSSIBLE ILLEGAL ACTIVITY

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Non-criminal issues, such as cheating (or even sexual harassment), which is not criminal in nature, the same “reasonable suspicion” standard does not apply. However, because of possible privacy concerns, you would

still want to make sure that you had a reasonable basis for performing the search and that the search was narrowly tailored. In other words, if you have credible evidence that a student is cheating by texting answers to another student, you can look at the text messages which were sent during the exam, but you would not look at photographs of students who are partying on the weekend or at text messages which were sent two months earlier.

As we face these issues, it helps to go back to some of the pre-technology principles. For instance, if a teacher suspected that a student was looking at answers written on the student's arm, the teacher could pull up the student's shirt sleeve and look at the student's arm. The teacher could not, however, perform a strip search of the student.